

COMMUNITY PROPERTY LEASING DISTINCTION IN NEW MEXICO & TEXAS

BY: J. BRIAN DAVIS OF KIRBY, MATHEWS & WALRATH, PLLC

In both Texas and New Mexico, if a tract of land is acquired during marriage there is a presumption that the tract of land is community property. If the tract of land is acquired by a deed which names both spouses as Grantees, any subsequent conveyances, including Oil, Gas and Mineral Leases must be executed by both spouses in order to be given effect. But what if a tract of land is acquired during marriage by a deed which only names one spouse as a Grantee? There is still a presumption that the tract of land is community property, but is it necessary to have both spouses execute a lease in order for it to be given effect? The answer depends on whether the tract of land is located in Texas or New Mexico.

To demonstrate, consider the following example: Lyle and Lisa Lawson were married in 2010. In 2011 Lyle decided that he wanted to surprise Lisa with a tract of land just outside of Big Lake, Texas; so he purchased a ten (10) acre tract in Reagan County ("Reagan County Tract"). The following year, Lyle surprised Lisa with a tract of land in a more exotic locale, by purchasing an additional ten (10) acre tract in Eddy County, New Mexico ("Eddy County Tract"). Both the deed to the Reagan County Tract and the deed to the Eddy County Tract list Lyle as the only Grantee. Neither tract of land is the Lawson homestead, however both tracts of land (collectively the "Lawson Tracts") are presumed, in accordance with Texas and New Mexico Laws, to be the community property of Lyle and Lisa Lawson.

In 2014, Hamilton Oil decides that they want to lease both of the Lawson Tracts. They send Greg Greenhorne, their newest field landman, to obtain leases on both tracts from the Lawsons. When Greg arrives at the Lawson's home he discovers that Lisa is away visiting her sister and won't be back for several weeks. However, Lyle is happy to execute a lease for each tract of land. Greg decides that Lyle's signature is sufficient since both tracts are only in the name of Lyle. Are the leases obtained by Greg Greenhorne valid?

In Texas, when community property has been acquired in the name of only one spouse, we may rely on that spouse's authority to execute a subsequent conveyance, without joinder of the other spouse as such property is considered that spouse's sole management community property. In this case, since the Reagan County Tract was only in the name of Lyle we can make the assumption that it was subject to his sole management, control, and disposition and therefore, the lease covering said tract would be valid. But what about the lease covering the Eddy County Tract?

New Mexico is a community property state, like Texas. However, sole management does not apply to any transfers, sales, mortgages or leases (*where the initial term, plus any option or extension, is of at least 5 years in duration or if the lease is for an indefinite term*) of real property. All such transactions require the joinder of both spouses and failure to include both spouses on an instrument in one of these transactions would result in said instrument being **void**.¹ This means that in our scenario, the lease covering the Eddy County Tract has no effect, and it is as if Lyle never even executed the lease, despite recordation. Does Greg have any option other than to obtain a new lease, this time executed by both Lyle and Lisa? Well, it turns out that in 1993 the New Mexico Legislature amended its statute so that "a spouse not joined in a transfer, conveyance, mortgage, lease or contract ... [may] validate an instrument at any time by a ratification in writing."² This means that Lisa may bring the void Eddy County Tract Lease back from the dead, simply by executing a written ratification of the lease.

In the scenario above, what if Burr Oil, Hamilton Oil's biggest rival, obtained a lease on the Eddy County Tract, executed by both Lyle and Lisa, before Greg had an opportunity to obtain a ratification from Lisa? Case law does not exist in New Mexico for this scenario. However, a court reviewing the case would most likely try to determine whether Burr Oil was a bona fide purchaser when it obtained a lease from Lyle and Lisa Lawson.

¹ English v. Sanchez, 110 N.M.343 (N.M. Sup. Ct. June 27, 1990).

² 1993 N.M. SB 524 – Enacted into law on April 2, 1993.

In New Mexico, in order to be a bona fide purchaser, Burr Oil would have had given value for the property interest, and been without constructive or actual notice of the existence of the prior lease.³ In our scenario the Hamilton Lease was recorded, but it would be considered void since it was only executed by one spouse. A court could find that Burr Oil was a bona fide purchaser since the Eddy County Tract Lease was void at the time that the Burr Oil Lease was obtained. As a result, the Burr Oil Lease would be superior to the Eddy County Tract Lease obtained by Hamilton.

Although both Texas and New Mexico are both community property states, it is clear that the consequences are much greater in New Mexico if one fails to obtain the joinder of both spouses on an oil and gas lease which covers community property, even if the property was obtained in the name of one spouse. Therefore, the best practice is to have both spouses join in the execution of an oil and gas lease, even though the New Mexico statute allows revival of an instrument which was previously void due to lack of joinder by a spouse. This will help one avoid situations such as the one discussed above.

¹ Kokoricha v. Estate of Keiner, 148 N.M. 322, 328 (N.M. Ct. App. May 6, 2010).



J. Brian Davis is an Associate Attorney licensed in Texas and New Mexico with Kirby, Mathews & Walrath, PLLC; a firm founded on the idea that oil and gas operators are best served by individuals that understand the needs of the industry, as well as fulfilling those needs in an efficient cost-effective and timely manner, all the while establishing a relationship and a dialogue with the client. In addition to being a member of various landmen associations, Mr. Davis is certified by the Texas Board of Legal Specialization in Oil, Gas and Mineral Law.



***Fast, accurate, on
time and in budget.***

SunCoast has been providing land services in every significant oil shale deposit in the United States for over 35 years. Our team of highly-experienced professionals is ready to join your team. From oil and gas acquisition to 3D seismic permitting to data management, our processes are proven, our practices are sound, and our results are unparalleled.

Call us today at 888-515-0024 to see how SunCoast can help your team succeed.

Gulf Coast | Mid-Continent | Midwest | Rocky Mountain | Permian Basin
Powder River Basin | Eagle Ford Basin | Illinois Basin

www.suncoastland.com

